

October 2, 2009

Responsible Official
Applicant Water System Name
Address
City, State Zip

Dear :

RE: Additional ARRA Provisions to be included in Future Amendments to Loan Agreement

As stated previously, the American Recovery and Reinvestment Act of 2009 (ARRA) requires that recipients of funds for projects funded all or in part by ARRA funds meet additional requirements and/or provisions beyond the standard loan agreement. By means of this memorandum, the Drinking Water Systems Improvements Revolving Loan Fund Program (DWSIRLF) is informing Loan Recipients of the additional provisions that will be included in all amendments to the initial loan agreements.

Some of the provisions listed have already been integrated into the initial loan agreements and those will be noted as such.

E-Payment to Vendors

Payments by state agencies to Loan Recipients using the SAAS shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Loan Recipient's choice.

E-Verification

The loan recipient represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act (Senate Bill 2988 from the 2008 Regular Legislative Session) and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Loan Recipient agrees to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State. Loan Recipient further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Loan Recipient understands and agrees that any breach of these warranties may subject Loan Recipient to the following:

- (a) termination of this Loan Agreement and ineligibility for any State or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- (b) the loss of any license, permit, certification, or other document granted to Loan Recipient by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year or

(c) both. In the event of such termination/cancellation, Loan Recipient would also be liable for any additional costs incurred by the State due to loan agreement cancellation or loss of license or permit.

Whistleblower Protection

[Section 1553 of Division A, Title XV of the American Recovery and Reinvestment Act of 2009, P.L. 111-5](#), provides protections for certain individuals who make specified disclosures relating to Recovery Act funds. Any non-federal employer receiving ARRA funds is required to post a notice of the rights and remedies provided under this section of the Act.

Required Contract Provision to Implement ARRA Section 902

Section 902 of the ARRA requires that each contract awarded by the Loan Recipient using ARRA funds must include a provision that provides the U.S. Comptroller General and his representatives with the authority to:

- (1) Examine any records of the Loan Recipient, contractor(s) or any of its subcontractors, or of any State or local agency administering such awarded contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- (2) Interview any officer or employee of the Loan Recipient, contractor(s) or any of its subcontractors, or of any State or local government agency administering the awarded contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights prescribed under Section 902 of the ARRA with respect to awarded contracts funded with recovery funds made available under the ARRA. Section 902 further states that nothing in 902 shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Authority of the Inspector General Provision

Section 1515(a) of the ARRA provides authority for any representatives of the United States Inspector General to examine any records or interview any employee or officers working on this loan agreement and awarded contracts. The Loan Recipient is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the Loan Recipient, contractor(s), its subcontractors or other firms working on awarded contracts. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

Availability and Use of Funds – Loan Recipient

The Loan Recipient understands and acknowledges that any and all payment of funds or the continuation thereof is contingent upon funds provided solely by ARRA or required state matching funds. Pursuant to Section 1604 of the ARRA, contractors agree not to undertake or make progress toward any activity using ARRA funds that will lead to the development of such activity as casinos or other gambling establishments, aquariums, zoos, golf courses, swimming pools or any other activity specifically prohibited by the ARRA.

Federal, State and Local Tax Obligations

By the signing this agreement, the Loan Recipient asserts and self-certifies that all Federal, State and local tax obligations have been or will be satisfied prior to receiving ARRA funds.

Anti-Discrimination and Equal Opportunity – Add provision to existing documentation Pursuant to Section 1.7 of the guidance memorandum issued by the United States Office of Management and Budget on April 3, 2009, ARRA funds must be distributed in accordance with all anti-discrimination and equal opportunity statutes, regulations, and Executive Orders pertaining to the expenditure of funds.

Access to Records

By the signing of this loan agreement, the Loan Recipient is aware that the State Auditor (pursuant to SB 3052, 2009 Regular Session) shall have access to ARRA records and employee information as necessary to conduct its work related to ARRA oversight.

Provisions Previously Discussed

The Buy American, Wage Rate, and Reporting Requirements as outlined in Sections 1605, 1606, and Title XV, Section 1512 of ARRA respectively are currently included in the initial loan agreements to Loan Recipients and will continue to be a part of future amendments to any loan agreement.

Segregation of ARRA Funds

The Loan Recipient must be able to track ARRA funds separately. The method of tracking should be in accordance with generally accepted accounting standards. This is particularly crucial if the total amount of federal funds received in the Loan Recipient's fiscal year exceeds \$500,000 in order to comply with the Single Audit Act.

We understand that these additional requirements may add an additional burden to the projects. Please be aware, also, that these requirements could change, based on further directions from EPA and Federal government. I venture to say that we are all in this together and that our DWSRF Program staff will assist you and your consulting engineers in anyway we can to make the process as least painful as possible.

If you have any questions concerning the new required provisions or other ARRA requirements, please contact me at 601-576-7518 or by e-mail at wmoody@msdh.state.ms.us.

Sincerely,

William F. Moody, P.E., BCCE
Director, Drinking Water SRF
Bureau of Public Water Supply

cc: Consulting Engineer